

Charter of Rights and Freedoms Background

History: Before 1982, the Canadian Constitution could only be modified with the permission of the Queen. In 1982, not only was the Constitution “repatriated” to Canada, but the Charter of Rights and Freedoms was added as part of the Constitution.

The Charter is part of the Constitution and so cannot be changed except by a constitutional amendment which is very difficult to do. Being part of the Constitution means that it is the supreme law of Canada and all laws must be consistent with the Charter or they will be declared to be “of no force or effect”.

Impact: The introduction of the Charter was a reaction to Canadian society’s increased recognition of human rights. The Charter protects rights and freedoms. It gives us a way to hold the government accountable when they breach those rights and freedoms without a good reason. It also shapes the way governments create and enforce laws as they know they must be in compliance with the Charter. It also means...

- People accused of crimes are considered innocent until proven guilty
- You can’t be searched without sufficient, clear legal reasons
- You can disagree with the government and protest peacefully

Application: The Charter is a check on the power of the government over the individual. It does not apply to actions between private individuals or organizations. The “government” includes federal, provincial, and municipal governments, and possibly certain policies or actions of First Nations governments (although there is no Supreme Court case yet). The Charter also applies to:

- Government officials and ministers acting within the scope of their duties
- Police services
- School boards, school authorities, and departments of education

Limitations on Rights:

s.1 The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

What does a “free and democratic” society look like? According to the Supreme Court of Canada, a free and democratic society’s values and principles include:

- inherent dignity of the human person,
- commitment to social justice and equality,
- accommodation of a wide variety of beliefs,
- respect for cultural and group identity, and
- faith in social and political institutions which enhance the participation of individuals and groups in society

(*R. v. Oakes*, [\[1986\] 1 S.C.R. 103](#) at para 64).

There are others, but these are some of the values and principles which guide the Court in applying section 1. Anytime the courts are asked to decide whether to limit a right or freedom under section 1, they must do it in light of the values and principles as well as their commitment to uphold the rights and freedoms of the Charter.

s.33 – the “Notwithstanding” clause allows a province to temporarily override the Charter. The override expires after 5 years, which allows voters to decide if they want to vote for the government that invoked the notwithstanding clause. The most recent example is the ban on religious symbols for public service workers in Quebec.

Specific Rights:

Fundamental Freedoms (s. 2): The Charter protects the freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association.

- [R. v. Big M Drug Mart, \[1985\] 1 SCR 295](#) There was a law in Alberta that banned stores from operating on Sunday, as it is a day of rest according to Christian tradition. The Supreme Court of Canada (SCC) decided that the law violated freedom of religion as it forced all people to conform to a specific religious tradition. They found the violation could not be saved by s.1.
- [Irwin Toy Ltd. v. Quebec \(Attorney General\), \[1989\] 1 SCR 927](#) Quebec had a law that banned commercial advertising aimed at children. Irwin Toy claimed that the ban violated their freedom of expression. The SCC decided that even though the law did limit the freedom of expression, the limit was justified because it was designed to protect vulnerable people (children).
- [R. v. Keegstra, \[1990\] 3 SCR 697](#) A teacher taught his students that the Holocaust never happened and that Jewish people were evil. He was convicted of promoting hatred. Mr. Keegstra argued that the law he was charged with violated his freedom of expression. The SCC found that it did limit his freedom but that the limitation was justified because it aims to protect groups targeted by hate speech.

Democratic Rights: (s.3-5): The Charter protects rights that enable you to participate in the democratic process and have your voice heard in the government.

- [Sauvé v. Canada \(Chief Electoral Officer\), 2002 SCC 68](#) Before this case, inmates serving over 2 years in jail were not allowed to vote in federal elections. The ban was challenged and the SCC decided the government had not justified infringing on inmates' democratic right to vote. As a result, all Canadian citizens over 18 are allowed to vote whether they are serving a sentence or not.

Mobility Rights (s.6): All Canadians have the right to enter, stay in and leave Canada. The Charter also guarantees that you can look for work or set up a business anywhere in Canada.

Legal Rights (s.7-14): The Charter provides a broad set of legal rights that protect us in our dealings with the justice system. It ensures that everyone is treated fairly during legal proceedings.

- [R. v. Oakes, \[1986\] 1 SCR 103](#) Mr. Oakes was charged with possession of a drug, and the law at the time assumed that those in possession of drugs planned on trafficking them. The onus was on Mr. Oakes to prove he did not

plan on trafficking. The SCC decided putting the onus on the accused violated the presumption of innocence (s.11(d)).

- [New Brunswick \(Minister of Health and Community Services\) v. G. \(J.\), \[1999\] 3 SCR 46](#) This case determined that the government should pay for a parent's lawyer when they remove a child from their care and the parent cannot afford to pay for a lawyer. This is because the removal of a child is so stressful, stigmatizing and detrimental to the parent/child relationship that it impacts the parent's security of person. Similar to how the government pays for lawyers where there is a chance the accused could lose their liberty, the parent has a right to meaningfully participate in the hearing to determine whether their child is taken away which often means having representation even if they cannot afford it.

Equality Rights (s.15): Everyone has the right not to be discriminated against by the government based on personal characteristics like race, national or ethnic origin, colour, religion, sex, age, disability or sexual orientation.

- [Eldridge v. British Columbia \(Attorney General\), \[1997\] 3 SCR 624](#) The Province of BC provided funding for medically required services but did not provide funding for sign language interpreters. A group of people born deaf argued that this infringed their equality rights. The SCC agreed that they were denied the equal benefit of medical care because they were not able to effectively communicate with their doctors.
- [M. v. H., \[1999\] 2 SCR 3](#) At the time, partners in same sex, common law relationships were not considered spouses under family law legislation and so could not sue for spousal support after a breakup. M argued that this violated her equality rights as it treated unmarried couples differently based on whether they were same sex or opposite sex. The SCC agreed which paved the way for full marriage equality 6 years later.
- [Reference re Same-Sex Marriage, \[2004\] 3 SCR 698](#) This is the case that legalized same sex marriage in Canada. The Federal government put a question to the SCC to determine whether legalizing same sex marriage violated the Charter, specifically the freedom to practice religion. The SCC found that expanding the definition of marriage to same sex couples was very much in keeping with the purpose of the Charter and that it did not violate religious freedoms as ministers were not obligated to perform same sex ceremonies. Affirming one group's rights, does not in itself impact another's rights.

Official Language Rights (s.16-22): English and French both have equal status, rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Minority Language Education Rights (s.23): The Charter requires that provincial governments provide education to its citizens in the minority official language of the province where numbers warrant.

See [Examples of Charter-related cases](#) for more cases and the impact they have had on Canadian society.

For more teaching resources see [The Charter in the Classroom](#) and [Graphics and learning resources](#).